

Hien D. Doan, Esq. SBN 197044
Attorney at Law
626 International Boulevard
Oakland, CA 94606
(510) 839-8808
(510) 839-8802 Facsimile

Attorney for Debtors/Defendants
FRANK LE and CINDY LE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No.: 08-51470
)	
FRANK LE and CINDY LE;)	Adversary No.: 08-05176
)	
_____)	DEFENDANTS' TRIAL BRIEF
TRAC VU;)	
)	Date: 11/23/2009
Plaintiff,)	Time: 9:30 AM
)	Dept: 3099
v.)	
)	
FRANK and CINDY LE;)	
)	
_____)	
Defendants)	

PURSUANT TO LOCAL COURT RULES, Defendants respectfully
submit this TRIAL BRIEF.

I. FACTUAL STATEMENT

Defendants and Plaintiff were former friends and were
involved in a joint business. As the business declined,
quarrels arose and the parties started to point fingers.
Lawsuits also were filed. Plaintiff filed a lawsuit against the

DEFENDANTS' TRIAL BRIEF

1 debtors in Santa Clara County, Case Number 105CV045733.
2 Debtors' sole income was from the business and once the business
3 shut down, they had no income. They did not have the proper
4 resources to defend the case. Therefore, the case resulted in a
5 **default judgment** in favor of plaintiff. There were no specific
6 findings of fraud or otherwise.

7 Falling onto bad times and losing all of their assets and
8 incomes, debtors filed for Chapter 7 relief on 03/27/2008.
9 Subsequently, plaintiff filed the Complaint for Determination of
10 Dischargeability on 06/20/2008.

11 12 **II. ALLEGATION UNDER 11 USC § 523**

13 Plaintiff cites 11 USC § 523(a)(2)(A) and alleges that the
14 debt in question was "obtained by ... false pretenses, a false
15 representation, or actual fraud."

16 However, plaintiff does not offer any evidence, but simply
17 produces an "amended" default judgment from the Santa Clara
18 County Superior Court.

19 20 **III. DISCHARGE UNDER 11 USC § 523**

21 Having no evidence of fraud, plaintiff has an impossible
22 high hurdle to overcome.

23 **A. Burden of Proof**

24 "A creditor must prove that a debt is nondischargeable by a
25 preponderance of the evidence." **Grogan v. Garner**, 498 U.S. 279,

1 11 S. Ct. 654, 112 L. Ed. 2d 755, 24 C.B.C.2d 1 (119). The
2 plaintiff offers no evidence except for a default judgment.
3 Furthermore, plaintiff did not perform any discovery during the
4 periods provided by the Court. Obviously, plaintiff will not
5 overcome the preponderance of the evidence.
6

7 **B. Exceptions to Discharge Construed Narrowly**

8 "The exceptions to discharge should be strictly construed
9 in favor of dischargeability." In re Hudson, 107 F.3d 355, 37
10 C.B.C.2d 1109 (5th Cir. 1997). Accord In re Peters, 133 B.R.
11 291 (S.D.N.Y. 1991), *aff'd*, 964 F.2d 166 (2d Cir. 1992).
12

13 The complaint filed by the plaintiff is vague and
14 ambiguous. Furthermore, it offers an unsupported timeline and
15 plaintiff's versions of events. Again, the only evidence is a
16 default judgment. No findings of fraud or otherwise have been
17 made. Therefore, this exception must be construed in favor of
18 dischargeability.
19

20 **IV. DISCOVERY AND EVIDENCE**

21 After the filing of this complaint by plaintiff, defendants
22 properly produced documents to plaintiff. Then, plaintiff was
23 afforded time, by this court, to conduct discovery and use ADR.
24 However, plaintiff conducted no discovery and did not follow
25 through with the ADR process.

1 Plaintiff simply did not avail himself of these
2 opportunities to support his case. Debtors' opinion is that the
3 plaintiff filed this complaint simply to thwart the debtors'
4 bankruptcy process and ultimate discharge.

5
6 **V. CONCLUSION**

7 Plaintiff produced very limited evidence. Plaintiff did
8 not conduct discovery. Therefore, plaintiff will not be able to
9 overcome the burden of proof - preponderance of the evidence.

10 Moreover, plaintiff avails himself of 11 USC §
11 523(a)(2)(A). However, this very section requires proof of
12 fraud. Plaintiff's only evidence of fraud is a **default**
13 judgment. There was no specific finding of any fraud or
14 wrongdoing. Furthermore, under § 523, exceptions to discharge
15 should be strictly construed in favor of dischargeability.

16 In conclusion, a judgment in favor of debtors and
17 defendants should be granted.

18
19 Dated: November 11, 2009

20 /s/ Hien D. Doan
21 Hien D. Doan, Esq.
22 Attorney for Debtors and
23 Defendants
24
25

1 **PROOF OF SERVICE**

2 I, Kevin Lee, declare under penalty of perjury that the
3 following facts are true and correct.

4 I am a citizen of the United States, over the age of 18
5 years, and not a party to the entitled action. I provide
6 administrative services at the law offices of HIEN DUC DOAN, 626
7 International Boulevard, Oakland, CA 94606.

8 On November 11, 2009, I served the following:

9 **DEFENDANTS' TRIAL BRIEF**

10 on all interested parties in said cause, be delivering a true
11 copy as follows:

12 [X] (By Mail) I placed a true copy thereof enclosed in a
13 sealed envelope with postage thereon fully prepared.
14 I deposited said envelope in the United States Mail in
15 or near the city of Oakland, CA.

16 [] (By Hand) I placed a true copy thereof enclosed in a
17 sealed envelope. I caused such envelope to be
18 delivered to the offices of the addressee.

19 [] (By Facsimile) I sent a true copy thereof via
20 telephone facsimile transmission to the following
21 number(s) and a hard copy to follow by mail.

22 Each envelope, if applicable, was addressed as follows:

23 **Paul Bick Nguyen, Esq.**
24 **Attorney at Law**
25 **480 N. First Street, Suite 100**
San Jose, CA 95112

Carol Wu, Trustee
25A Crescent Drive, #413
Pleasant Hill, CA 94523

Executed on November 11, 2009, at or near Oakland, CA.

/s/ Kevin Lee
Kevin Lee